

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**JESSE J. FLOYD**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO. 3:15-CV-461-CWR-LRA**

**WARDEN B.E. BLACKMON, ET AL.**

**DEFENDANTS**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

This matter is before the Court on Plaintiff's Objection to the Report and Recommendation of United States Magistrate Judge Linda R. Anderson, entered on August 9, 2016, dismissing Plaintiff's Complaint after considering the allegations contained therein, the Defendants' motion for summary judgment and accompanying memorandum, and the Plaintiff's response. Docket No. 26. Having considered said Report and Recommendation, the Plaintiff's objections thereto, applicable statutory and case law, and being otherwise fully advised in the premises, the Court concludes that Defendant aptly demonstrated that Plaintiff failed to exhaust his administrative remedies. *See Wilson v. Epps*, 776 F.3d 296, 301 (5th Cir. 2015); *Trigg v. Wiginton*, 600 Fed. App'x 295, 296 (5th Cir. 2015). Plaintiff's objection is without merit, and the Court hereby adopts, as its own opinion, the report and recommendation of the magistrate judge.

Based on the foregoing, it is ordered that the report and recommendation of United States Magistrate Linda R. Anderson, entered on August 9, 2016, is hereby adopted as the finding of this Court. The Complaint in this matter shall be dismissed without prejudice.<sup>1</sup>

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<sup>1</sup>The United States filed a motion to substitute as the sole defendant. Docket No. 7. That motion was not considered by the magistrate judge. Clearly, the claims brought by the Plaintiff and the relief requested against them concern the governmental entity itself and therefore, countenance a finding that the motion be granted. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *Jennings v. Oneal*, 8:00-CV-635-T-23E, 2000 WL 1799108, at \*1 (M.D. Fla. Aug. 31, 2000). Having determined that Plaintiff's Complaint must be dismissed for failure to exhaust

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED, this the 30<sup>th</sup> day of September, 2016.

s/ Carlton W. Reeves

UNITED STATES DISTRICT JUDGE

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administrative remedies, the Court finds that the motion to substitute is moot.